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OFFICE OF PETITIONS

In re Patent No. 5,673,190
Issue Date: September 30, 1997
Application No. 08/408,563
Filed: March 22, 1995
Patentee(s): Curtis O. Kahleck, et. al.

ON PETITION

This is a decision in response to the renewed petition, filed on September 19, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent under 37 CFR 1.378(e).

The petition is DISMISSED under the provisions of 37 CFR 1.181(f).

A review of the record shows that a decision was mailed on July 15, 2010, which set a response period of two months from the mail date of the decision. The decision also stated that no extension of the two month time limit can be granted. Accordingly, a renewed petition, including the \$400 petition fee, was due on or before September 15, 2010. Since the present petition was filed on September 19, 2011, it is properly dismissed as untimely¹.

Petitioner should note that an appropriate petition under 37 CFR 1.378(c) must be filed within twenty-four months from the date of expiration; however, any new petition filed in response to this decision would be barred from filing under 37 CFR 1.378(c)², since it would be outside the twenty-four months provided.

However, the Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if the delay in filing a grantable petition under 37 CFR 1.378(b) is shown to the satisfaction of the Director to have been unavoidable. Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

¹ See 37 CFR 1.181(f).

² This patent expired on September 30, 2009.

- (1) the required maintenance fee set forth in §1.20 (e)-(g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Petitioner is advised that the mere suggestion of a filing a petition under the unavoidable provisions of 37 CFR 1.378(b), does not necessarily mean the petition will be granted. All the requirements of 37 CFR 1.378(b) must be met.

In view of this decision, the maintenance fee and surcharge in the amount of \$2,130 is being refunded to petitioner by Treasury Check, in due course.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
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By Internet: EFS-Web³

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

/Andrea Smith/
Andrea Smith
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Office of Petitions

³ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)